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SENATE BILL 3236 By
McNally

HOUSE BILL 3240
By Scroggs

AN ACT to amend the Tennessee Code Annotated, Title 9, Chapter 6, Title 56, Title 71, and Title 67 relative to the provision of health insurance, the taxation of premiums and administrators, the appropriation of funds for Medical Assistance and, further, to amend Tennessee Code Annotated, relative to the issuance of Declination letters by Accident & Health Insurance Companies, Hospital and Medical Service Corporations, Hospital Service Organizations, Medical Service Organizations, Point of Service Plans, Health Maintenance Organizations, Preferred Provider Organizations and Physician Hospital Organizations

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE

SECTION 1. This act shall be known as "The Health Insurance Responsibility Act of 2000".

SECTION 2. (a) The General Assembly hereby declares that as a matter of public policy, the primary source of health insurance for employed individuals should be an employer sponsored health insurance plan. Furthermore, the General Assembly hereby declares that it is a taxable privilege for an employer to conduct business in this state without providing adequate health insurance coverage to the employer's employees who are employed in Tennessee, their spouses and dependents.

(b) For the purpose of this section, an employee or the employee's spouse or

dependents are deemed covered if they have obtained adequate health insurance coverage from a source other than the employer, unless the coverage is obtained under the state's TennCare program.

(c) For the purpose of this section, the requirements of "adequate health insurance coverage" shall be a health insurance plan determined by the Department of Commerce and Insurance to be equal or superior to the benefits provided through the standard health care plan established through the Small Employer Group Health Coverage Act, Tennessee Code Annotated Section 56-7-2201, et seq., or, if a self-funded or Taft-Hartley plan, a plan which has met the requirements of the federal Employee Retirement Income Security Act of 1974.

(d) For the purpose of this section, the requirements of "adequate health insurance coverage" shall include compliance with the provisions of the Tennessee Health Insurance Portability, Availability and Renewability Act and the federal Health Insurance Portability and Accountability Act of 1996.

(e) All employers who are subject to the provisions of this section and who fail to provide adequate health insurance coverage as required by this section shall pay to the State of Tennessee a tax of one and a half percent (1.5%) of their annual total gross revenues. This tax shall not apply to religious, charitable, or non-for-profit employers. The provisions of this section shall apply on and after January 1, 2001 to all employers with two hundred or more employees in Tennessee. The provisions of this section shall apply on and after January 1, 2002 to all employers with one hundred or more employees in Tennessee. The provisions of this section shall apply on and after January 1, 2003 to all employers with twenty-five employees or more in Tennessee.

(f) This section shall be administered by the Department of Commerce and Insurance. For purposes of implementing this section, the Commissioner of Commerce and Insurance shall have the authority to promulgate any rules necessary to effectuate

the purposes of this section. Such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, codified at Title 4, Chapter 5 of the Tennessee Code Annotated.

SECTION 3. Tennessee Code Annotated, Title 9, Chapter 6, is amended by adding the following new section:

(a) For any law enacted after the effective date of this act, which results in a net increase in the state share of the cost of medical assistance provided through the Medicaid or TennCare programs authorized under Tennessee Code Annotated, Title 71, Chapter 5, part 1, there shall be appropriated from recurring revenues the estimated state share of the operating cost of such law.

(b) "Operating costs" as referred to in subsection (a) means all costs other than capital outlay costs.

(c) The amount of appropriations made under subsections (a) and (d) shall be equal to the amounts reflected in fiscal notes prepared by the staff of the fiscal review committee. For purposes of subsection (a), such costs shall be the operating cost, in current dollars, of the highest of the next five (5) years commencing after the effective date of any law described in the subsection (a) enacted after the date this act becomes effective.

(d) Prior to submission of the budget for fiscal years beginning after 2000-2001, estimates of any appropriations made under subsection (a) may be adjusted to determine the amount of appropriations of recurring revenues to be repeated for the ensuing fiscal year. If no adjustment is made, then the amount of appropriations previously made shall be repeated.

(e) Appropriations made under the provisions of this section shall be place in a reserve to be used only for the following purposes:

(1) Appropriation for one-time non-recurring health related Expenditures;

(2) Increasing the reserve for revenue fluctuation; or,

(f) Any law enacted without the funding required by this section shall be null and void unless such funding is appropriated in the general appropriation act.

SECTION 4. Tennessee Code Annotated, title 56, Chapter 8 is hereby amended by adding the following sections as a new part entitled “Declination of Accident and Health Coverage.”

SECTION 5. This part sets forth prohibitions against the wrongful declination to issue coverage for health insurance based upon uninsurability, and against the wrongful declination of enrollment by a hospital or medical service corporation or health maintenance organization based upon uninsurability. It is the expressed intent of the General Assembly that this part be liberally construed to effect its purpose.

SECTION 6. Definitions. The following definitions shall apply to the new part to be entitled “Declination of Accident and Health Coverage”:

(1) “Commissioner” shall mean the Commissioner of Commerce and Insurance.

(2) “Accident and health insurance” shall have the meaning as defined in section 56-2-201(1).

(3) “Hospital or medical service corporation” shall have the same meaning as a hospital or medical service organization regulated by Chapters 27, 28 and 29 of Title 56.

(4) “Health maintenance organization” shall have the same meaning as defined in section 56-32-202.

(5) “Licensed entity” shall collectively mean any person that is an accident and health insurance company, hospital and medical service corporation, health maintenance organization, hospital service corporation and medical service corporation.

(6) “Licensed person” shall mean any person who is licensed pursuant to the

provisions of Title 56, Chapter 6.

SECTION 7. (a) Notwithstanding any other provision of this title, no insurance company, medical or hospital service corporation, health maintenance organization, preferred provider organization or point of service plan may decline to issue to any person accident or health insurance or enroll any person in a plan for health care coverage or for the provision of basic health care services due to uninsurability unless (1) such declination is based upon sound underwriting principles which the Commissioner shall by rule prescribe; and (2) such declination complies with both the Tennessee Health Insurance Portability, Availability and Renewability Act, compiled at Tennessee Code Annotated Sections 56-7-2801, et seq., and the federal Health Insurance Portability and Accountability Act of 1996.

(b) No licensed person pursuant to Title 56, Chapter 6 shall fail to submit to a licensed entity any completed application for health insurance, health care coverage, basic health care services, preferred provider plan furnished health care services or point of service plan furnished health care services.

(c) No licensed person pursuant to Title 56, Chapter 6 shall charge any fee other than as contained in a licensed entity's rate filing with the Commissioner, for the taking of any application for health insurance, health care coverage, basic health care services, preferred provider plan furnished health care services, or point of service plan furnished health care services.

SECTION 8. (a) The Commissioner may cause the examination or investigation of any licensed entity, any preferred provider organization, any point of services plan, or any licensed person to determine compliance with this part. Such examination or investigation may occur during any periodic examination of a licensed entity as provided under Tennessee Code Annotated Section 56-1-408, or Tennessee Code Annotated Section 56-32-215. Further, the Commissioner is authorized to conduct such

examinations or investigations from time to time or at any time so as to determine compliance with the provisions of this part.

(b) The Commissioner shall have the power to issue subpoenas, to compel the production of books and records, and to conduct depositions of witnesses.

(c) The Commissioner may contract for examiners to conduct such examinations or investigations as provided herein. The expenses of such examinations or investigations shall be paid by the licensed entity and/or licensed person examined or investigated.

(d) Any person who refuses to obey any subpoena issued by the Commissioner or fails to cooperate with the Commissioner's examiners or investigators, in addition to any other remedies provided in this Title, may be held in contempt of court. The Chancery Court of Davidson County shall have sole jurisdiction for the enforcement of subpoenas issued pursuant to this part. In addition, the Commissioner may issue to any licensed entity or licensed person an order of summary suspension of any certificate of authority or any license if such entity or person (1) fails to comply with a subpoena issued under this part, or (2) fails to cooperate with the Commissioner's examiners or investigators. Such order of summary suspension may be issued without prior notice, but must be issued in compliance with Tennessee Code Annotated Section 4-5-320.

(e) Any document or testimony received in an examination or investigation conducted under this part or any document or other evidence received to determine whether such examination or investigation should be commenced under this part, and examination or investigative report prepared pursuant to this part shall be confidential and not subject to public disclosure unless such document, testimony, or report is used in a court proceeding as authorized by this part or a contested case proceeding as authorized by this part.

SECTION 9. (a) The Commissioner may issue an order suspending or revoking any certificate of authority issued to a licensed entity found to be in violation of this part.

(b) The Commissioner may issue an order suspending or revoking the license of any licensed person found to be in violation of this part.

(c) In any proceeding where, for violations of this part, the Commissioner may suspend or revoke a certificate of authority or license issued pursuant to this Title, the commissioner may, in addition to such suspension or revocation, assess a fine not exceeding \$5,000 for each violation.

(d) The Court or the Commissioner may, for good cause shown, waive any or all costs of examination, investigation, or proceedings as assessed to a licensed entity or licensed person.

SECTION 10. (a) The Commissioner is authorized and may issue, promulgate, or amend any rules, forms, or orders as are necessary to effectuate the purposes of this part.

(b) The Commissioner may promulgate rules defining any term used in this part.

(c) Rules and regulations shall promulgated in accordance with the provisions of the Uniform Administrative Procedures Act complied in Title 4, Chapter 5, Tennessee Code Annotated.

(d) The Commissioner, so as to implement or comply with this part, is hereby authorized to promulgate public necessity rules pursuant to Tennessee Code Annotated Section 4-5-209, at any time.

(e) No order, except investigative or examination orders, shall be issued under this part without:

(1) Notice, which shall be prior notice, except as otherwise provided herein or unless the Commissioner has determined that prior notice would be detrimental to policyholders, members, or enrollees;

(2) An opportunity for a hearing; and

(3) Findings of fact and conclusions of law.

(f) Such hearings or proceedings (except investigations and examinations) conducted under subpart (e) shall constitute a “contested case” and shall be conducted pursuant to the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5 of the Tennessee Code Annotated.

SECTION 11. Any willful violation of this part (including, but not limited to, a violation by a preferred provider organization or a point of service plan, or such organizations’ agents, servants or employees, not licensed under title 56 of Tennessee Code Annotated) shall constitute a Class D felony.

SECTION 12. (a) Any person (including, but not limited to, a preferred provider organization or a point of service plan, or such organizations’ agents, servants or employees) who, as a part of a scheme to wrongfully qualify an applicant for coverage under the TennCare program, violates this part shall be liable to the State of Tennessee for all costs and expenses, including attorney’ s fees, if any, incurred by the state in connection or associated with providing benefits or services to such applicant found to be ineligible for TennCare benefits or services.

(b) If such act in violation of this part is part of a scheme as set forth in (a) of this section and has been determined to be willful act, such person or persons committing such willful act shall be liable for treble the amount determined in subpart (a) of this section.

SECTION 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invoking provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 14. There shall be no liability on the part of, and no cause of action of any nature shall arise against the Commissioner or the department or its employees or agents for any action taken by them in the performance of their powers and duties hereunder.

SECTION 15. All revenues generated pursuant to this act shall be designated to defray the costs of operating the TennCare program, excepting a portion thereof on a recurring basis for the implementation of this act.

SECTION 16. This act shall, for purposes of rulemaking, become effective upon becoming law. For all other purposes, this act shall become law on January 1, 2001, the public welfare requiring it.